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Special Processing Submission

Via Facsimile – 571-273-8300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:	Hooman A. Asbaghi)
Serial No:	09/775,239)
Patent No.:	6,530,905) Art Unit
Filed:	February 1, 2001) 3754
Issued:	March 11, 2003)
For:	SELF-SHEATHING DENTAL NEEDLE)
Examiner:	Philippe Derakshani)
Customer No:	23862)
Attorney Docket:	11370.1 (formerly 11311.1))

PATENT

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MAR 26 2012REQUEST FOR RECONSIDERATION OF DISMISSED PETITION TO REVIVE A
PATENT DUE TO UNAVOIDABLE DELAY IN PAYMENT OF MAINTENANCE FEE

Attention: Office of Petitions
Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Request for Reconsideration of a Dismissed Petition to Revive a Patent Due to an Unavoidable Delay in the Payment of Maintenance Fees under 37 CFR 1.378(b). A petition fee of \$400.00 due under § 1.17(f) is included with this Request for Reconsideration. The following fees were previously submitted with the petition to revive due to unavoidable delay in payment of maintenance fees filed January 4, 2012: (1) 3.5 year maintenance fee: \$565.00; (2) 7.5 year maintenance fee: \$1425.00; and (3)

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Surcharge under § 1.20(i)(1): \$700.00.

Background

On January 4, 2012, Hooman A. Asbaghi (hereinafter, the "Patentee") submitted a Petition To Revive Due To Unavoidable Delay In Payment Of Maintenance Fees with Exhibits A-C under 37 CFR 1.378(b). In response, the Office of Petitions dismissed Patentee's petition on January 26, 2012. In that response, the Petitions Attorney found that the instructional error of checking the wrong line on an Attorney generated form letter, which indicated "Please do not pay the maintenance fee and allow this case to go abandoned," was not a reasonable exercise of due care by the Patentee. The Petitions Attorney then stated that "the lack of any billing from Nydegger to Patentee for payment of the first maintenance fee would have prompted a prudent and careful person to make inquiry".

Subsequent to the dismissal of Patentee's petition, however, Patentee has discovered evidence, contrary to the instructional error, that a payment for the maintenance fee was, in fact, sent by Patentee to Patentee's Attorney. As detailed further below, the payment was submitted to Patentee's Attorney on or about the same date as the submission of the form letter having the erroneously instructions. More specifically, evidence is submitted herewith of such payment in the form of a Patentee statement (See attached revised Exhibit C: Revised Statement of Hooman A. Asbaghi (the "Patentee"), a copy of a bank-processed check (see attached new Exhibit D: Copy of Bank-Processed Check) and a copy of Law Firm accounting records showing Attorney's receipt and deposit of said check (see new Exhibit E: Law Firm Billing Records indicating payment of \$685.00 received and new Exhibit F: Copy of Bank Record indicating deposit of \$685.00 on August 15, 2006)).

Patentee respectfully contends this new evidence shows that Patentee exercised reasonable care in believing that the maintenance fee had been properly paid after noting the check had been cashed. Moreover, and importantly, this newly submitted evidence

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further buttresses Patentee's position that (1) the delay in maintenance fee payment was unavoidable as Patentee fully believed the maintenance fee had been paid. Thus, in actuality, it was due to nothing more than a single, simple mistake made by Patentee on an Attorney generated form letter, (2), the instructional error was undetectable by Patentee using reasonable care between the time the error was made and September 16, 2011 when Patentee was informed the patent had lapsed, and (3) that Patentee's error is the type of mistake which the Office of Petitions has previously granted relief.

Petitioner respectfully asserts that the single error made here, inadvertently marking the wrong instructional line on an Attorney generated form letter, is similar to the type of clerical / docketing errors which have previously been successful in providing the basis for a showing of "unavoidable" delay (see e.g. MPEP 711.03(c)). In this case, Patentee received evidence the check had been cashed (Exhibit D), and therefore there was no need for additional follow-up.

Facts in support of an unavoidable delay in payment of maintenance fee

The patent for "Self-Sheathing Dental Needle" (U.S. Patent No. 6,530,905) (hereinafter "the patent") referenced above issued on March 11, 2003 to Hooman A. Asbaghi (hereinafter, the "Patentee"). This patent application for the patent was filed and prosecuted by the law firm of Nydegger and Associates of San Diego, CA (hereinafter, the "Attorney").

In accordance with docketing procedures (See attached Exhibit A), Attorney sent an attorney-generated form letter to Patentee on August 1, 2006, regarding an upcoming due date of September 11, 2006 for payment of the 3.5 year maintenance fee for the patent. Attorney received the completed form letter from Patentee on August 14, 2006 instructing Attorney to not pay the maintenance fee and to allow the patent to go abandoned (See attached Exhibit B). On or about August 10, 2006, Patentee sent a check dated August 10, 2006 for the amount of \$685.00 (the amount specified in the letter of August 1, 2006) to Attorney.

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Upon receipt of the August 14, 2006 response letter from Patentee which inadvertently instructed Attorney to not pay the maintenance fee, Attorney updated their docketing records to remove any further reminders regarding the maintenance fee, and did not pay the 3.5 year maintenance fee. The patent then lapsed on April 11, 2007. In accordance with law firm procedure, after receiving Patentee's instruction, no further correspondence regarding the maintenance fee or the fact that the patent had lapsed was sent to Patentee from Attorney. Note also, that in accordance with law firm procedure, no confirmation is sent to a client once a maintenance fee has been paid, so Patentee was reasonable in believing that the maintenance fee had been paid based on his belief that he had checked the correct box on the attorney-generated form letter and after noting that his check had been cashed.

Upon receipt of the check, Attorney did not realize that the check corresponded to the amount of the maintenance fee for which Patentee had inadvertently indicated should not be paid. Accordingly, Attorney cashed the check on approximately August 18, 2006 and applied the proceeds to Patentee's outstanding balance that was owed to the firm for legal services provided and fees advanced in a corresponding Canadian patent case. The back of the bank-processed check indicates that the check was deposited by Attorney into Attorney's account on approximately August 18, 2006. There were no other invoices sent to Patentee for the amount of \$685.00 in the month of August, 2006, and, as a consequence, it is clear it was Patentee's intent that the check for \$685.00 was to pay the 3.5 year maintenance fee for U.S. Patent No. 6,530,905.

On September 14, 2011, Patentee called Attorney to discuss the status of the corresponding European patent for the same invention. During this conversation, Patentee discovered, for the first time, that the United States Patent had lapsed. At that time, Attorney provided Patentee with a copy of the August 14, 2006 letter showing that Patentee checked the box indicating not to pay the maintenance fee. After viewing the letter of August 14, 2006, Patentee immediately stated he had checked the wrong box when responding to Attorney (See attached Exhibit C: Revised Statement of Hooman A. Asbaghi (the "Patentee")). Once notified of the instructional error on September 14, 2011,

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Patentee did everything reasonably possible to timely expedite the processing of documentation required to revive the lapsed patent. On September 30, 2011, Patentee called Attorney to inquire about the procedures required to revive the patent. Funds, along with instructions to begin work on a Petition to Revive, were provided to Attorney on December 6, 2011 and a petition to revive was filed January 4, 2012.

Request for Revival

With the above in mind and evidence provided in the Exhibits included with this petition, the Patentee respectfully requests that the Patent be revived due to an unavoidable delay in the payment of maintenance fees under 37 CFR 1.378(b).

Dated this 23rd day of March, 2012.

Respectfully submitted,



NEIL K. NYDEGGER
Attorney for Applicant
Registration No. 30,202
Customer No. 23862

NYDEGGER & ASSOCIATES
348 Olive Street
San Diego, California 92103
Telephone: (619) 688-1300

Docket: 11370.1 (formerly 11311.1)

Exhibit A: Docketing Procedures of Nydegger and Associates for Paying U.S. Patent Maintenance Fees

Computer Patent Annuities (CPA) is used by Nydegger and Associates to track, remind, and pay all U.S. and foreign maintenance fees.

The following steps apply to the patent referenced in this Petition:

1. When a patent application is filed, a File Input Sheet is sent to CPA informing them of the application number and filing date.
2. When a patent application issues, an updated File Input Sheet with the patent number and issue date is sent to CPA.
3. Approximately 3 months before the maintenance fee payment window opens, CPA sends a renewal notice. At this point, a letter is sent to the client informing the client of a maintenance fee due and asking for instructions;
4. The actual due date is docketed along with a one month reminder.
5. A docketing spreadsheet is also updated as needed with the following information:
 - a. file number
 - b. due date
 - c. date letter sent to client
 - d. date instructions received from client
 - e. date instructions were sent to CPA
 - f. amount and date an invoice was received and billed to the client
 - g. date the invoice was paid by Nydegger and Associates
6. If Nydegger and Associates has not heard from the client by the one month due date reminder, this office will begin contacting the client via another letter, email, a phone call, or a combination of the preceding methods of communication.
7. Nydegger and Associates also re-dockets for the 6 month extension period with a one month reminder. Again, this is done by contacting the client via another letter, email or a phone call.

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TO: Auto

Exhibit B

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NYDEGGER & ASSOCIATES

TARYL L. ANDERSEN
ADMINISTRATOR
email@nydegger.comATTORNEYS AT LAW
348 OLIVE STREET
SAN DIEGO, CALIFORNIA 92103TELEPHONE
(619) 688-1300
FACSIMILE
(619) 688-1322

August 1, 2006

HBA MEDICAL GROUP, INC.
c/o Hooman A. Asbaghi
3414 Jackdaw Street
San Diego, CA 92103Re: SELF-SHEATHING DENTAL NEEDLE
U.S. Patent No. 6,530,905
Our File: 11370.1

Dear Mr. Asbaghi:

Our docketing system has brought to my attention the fact that a maintenance fee is due on September 11, 2006 with respect to the above-identified patent property. The cost for payment of this fee will be approximately \$685.00. Failure to pay the maintenance fee will cause this patent property to lapse; conversely, upon the payment of the maintenance fee the patent property will remain in force for another year (or other period of time).

With regard to this matter, we look forward to receiving your instructions before April 25, 2006. Absent specific instructions from you, we will not proceed to pay the maintenance fee. A copy of this letter is enclosed for your response.

Very truly yours,

NYDEGGER & ASSOCIATES


TARYL L. ANDERSEN
Administrator☐ Please pay the maintenance fee.☒ Please do not pay the maintenance fee and allow this case to go abandoned.
Signature

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Exhibit C: Updated Statement of Hooman A. Asbaghi (the "Patentee")

I, Hooman A. Asbaghi, President of HBA Medical Group, Inc. (the "Assignee"), sent Attorney correspondence received by Attorney on August 14, 2006, in which I inadvertently checked the wrong box which incorrectly indicated I did not wish to pay the 3.5 year maintenance fee for the patent that is the subject of this Petition to Revive. I meant to check the block that indicated I wanted to pay the 3.5 year maintenance fee. I also sent a check dated August 10, 2006 for the amount indicated in the correspondence of August 14, 2006, \$685.00, which was processed by Bank of America on August 18, 2006. The check was sent to pay the 3.5 year maintenance fee and corresponding legal fees.

I did not find out that the patent referenced in this Petition had lapsed until approximately September 14, 2011, when I called Taryl Andersen, the Office Administrator at the law firm of Attorney, to inquire about the corresponding European patent related to the same invention. During this conversation, Taryl Andersen informed me that the US patent had lapsed. It was at that time that I first realized that I had checked the wrong box on Attorney's form back in 2006.

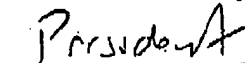
Due to my various business endeavors in the United States and abroad, I am involved with numerous patents and patent applications. I was always under the impression that the maintenance fees for the patent had been paid. I had no reason to believe otherwise. In fact, in 2005, I was in a business arrangement with a Japanese company named Nipro that involved the patent. Under the terms of this business arrangement, it was essential that the patent be maintained in the United States.

On September 14, 2011, upon learning that the patent was abandoned, I asked for information about how I could revive this patent. After finding out the patent was abandoned during my conversation with Taryl Andersen, I also went to Attorney's office on September 14, 2011 to discuss my predicament in person with Attorney. Once I fully understood my options for reviving the Patent, I gave my attorney instructions to diligently pursue this matter, and provided the funds required to proceed with filing this petition on December 6, 2011.

HBA Medical Group, Inc.

By: 

Hooman A. Asbaghi



(Title)

Date: 3-23-12

Exhibit D

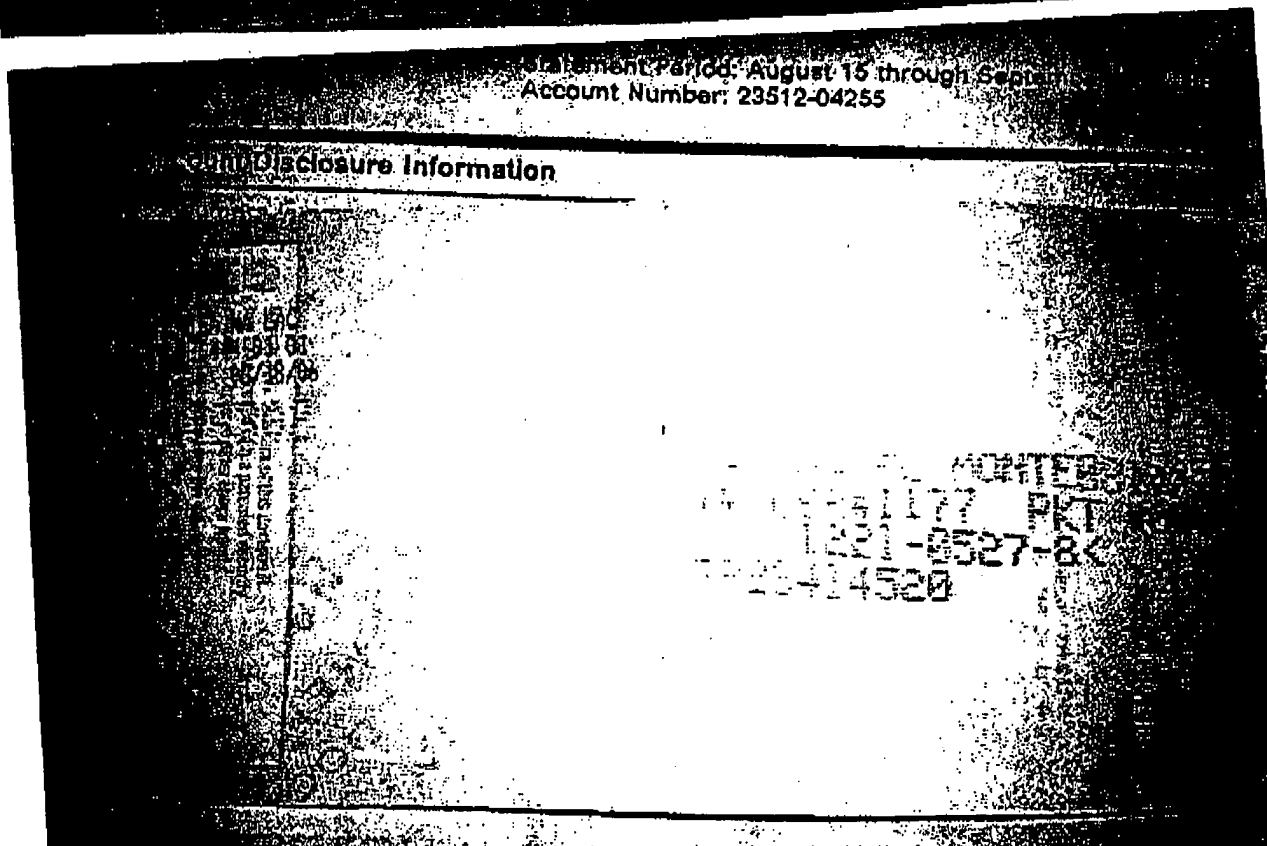
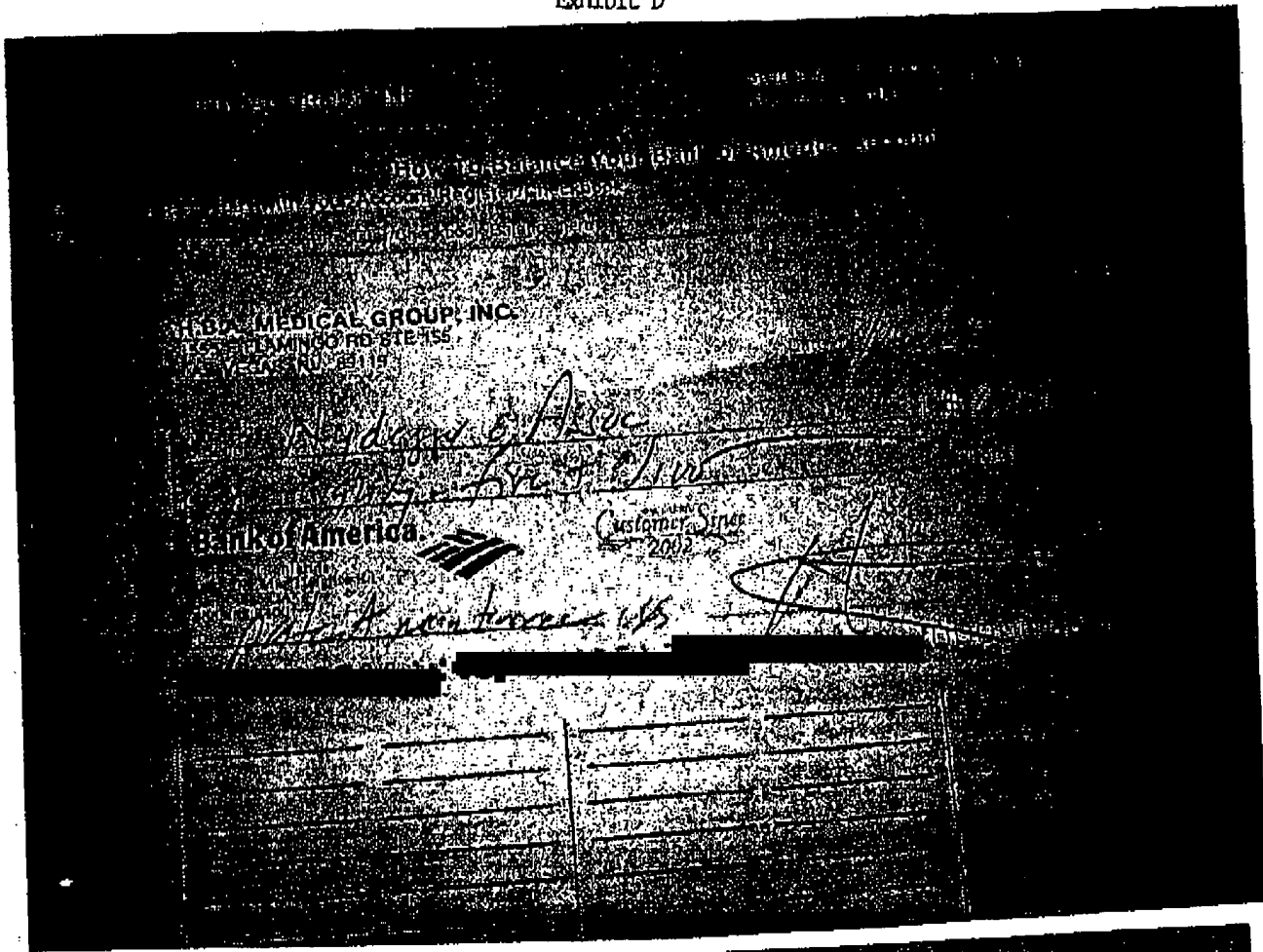


Exhibit E

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03/10/2012 NKN

NYDEGGER & ASSOCIATES
348 OLIVE STREET
SAN DIEGO, CALIFORNIA 92103
619-688-1300

HBA MEDICAL GROUP INC.
C/O HOOMAN ASBAGHI
2500 SIXTH AVENUE
UNIT 1008
SAN DIEGO CA 92103

* indicates work-in-process

Client #: 11370

File #: 11370-1a

As of Date: 12/31/2006

Last Billed 02/29/2012

RE: CANADA - Self-Sheathing Dental Needle

DATE	TKPR	DESCRIPTION OF SERVICES RENDERED	TIME	AMOUNT
01/04/2006	TLA	Correspondence to client requesting instructions re payment of maintenance fee	1.00	100.00 ✓
05/26/2006	TLA	Correspondence to client requesting instructions re examination deadline; docketing	1.00	100.00 ✓
07/21/2006	TLA	Prep and transmittal of payment of maintenance fee	1.20	120.00 ✓
08/02/2006	TLA	Prep and transmittal of payment of maintenance fee	1.20	120.00 ✓
12/29/2006	TLA	Correspondence to client re final request for instructions re examination deadline in Canada; docketing	.75	75.00
TOTAL SERVICES RENDERED:			5.15	\$515.00
07/21/2006		Fees Advanced - Maintenance Fee		661.47 ✓
08/02/2006		Fees Advanced - Maintenance Fee		1,081.55 ✓
TOTAL COSTS ADVANCED:				\$1,743.02
04/12/2006		Payment Received - Thank You		100.00 ✓
07/28/2006		Payment Received - Thank You		100.00 ✓
07/28/2006		Payment Received - Thank You		781.47 ✓
08/16/2006		Payment Received - Thank You		685.00 ✓
TOTAL PAYMENTS RECEIVED:				\$1,666.47

Exhibit F

DATE: 20060815
DIN: 3637230452
POSTACCT: 890008062
AMOUNT: 1172435

[illegible]

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